

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5666

PETITION OF JOSE AND MARIBEL ROMERO

(Hearing held October 31, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, December 5, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(b)(1) and 59-B-3.1. The petitioners propose to construct: a carport that requires a two (2) foot variance as it is within five (5) feet of the side lot line and a covered porch that requires a 2.95 foot variance as it is within 21.50 feet of the established front building line. The required side lot line setback is seven (7) feet and the required established front building line is 24.45 feet.

Craig Davis, the petitioners' contractor, appeared at the public hearing with the petitioners.

The subject property is Lot 30, Block 9, Wheaton Woods Subdivision, located at 12910 Grenoble Drive, Rockville, Maryland, in the R-60 Zone (Tax Account No. 01273085).

Decision of the Board: Requested variance for covered porch **granted**.
Requested variance for carport **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a carport in the northern side yard and a 5 x 15 foot covered porch at the front of the residence.
2. The petitioners testified that a carport could not be constructed in the rear yard because of a very high hill that would need to be excavated. The petitioners testified that a concrete driveway exists where the carport would be built and that the carport would have the same roof-line as the residence.
3. Mr. Davis testified that several large trees are located in the rear yard that would have to be removed in order to build the carport in this area. Mr. Davis testified that the rear yards of all of the properties on the petitioners' side of the street are impacted by a steep, downward-sloping hill.
4. Mr. Davis testified that the other homes on the street all have covered porches and that the petitioners' residence is the only house without a porch. The petitioners testified that the porches on the street ranged in distance to street from 27 to 29 feet

and that the petitioners' residence is sited closer to the street than the neighboring houses on the same side of the street.

5. The covered porch must meet an established front building line, which is a greater standard than typically required for R-60 zoned properties. The established building line is the average distance from the street of all the houses within 300 feet in either direction of the subject property. Exhibit No. 10 shows the properties used in the calculation of the established front building line.
6. Mr. Davis testified that the neighbor most impacted by the construction of the carport supports the variance request.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance for the covered porch can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

1. The petitioners' residence is located closer to the street than the neighboring homes. The other homes on the street all have existing covered porches. The covered porch must meet an established front building line. The Board finds that this is an extraordinary circumstance and that the established front building line unfairly impacts the property. The Board further finds that the extraordinary circumstance is peculiar to the property, and that the strict application of the regulations would result in unusual practical difficulties to and an undue hardship upon the property owners.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

2. The Board finds that the variance requested for the proposed construction of a covered porch is the minimum reasonably necessary to overcome the extraordinary circumstance.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

3. The proposed construction of a covered porch will continue the residential use of the property and the variance can be granted without impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

4. The porch, as proposed, will be similar to the neighboring porches in the immediate vicinity and would not be detrimental to the use and enjoyment of the adjoining and neighboring properties. The record contains no correspondence or testimony in opposition to the variance request for the covered porch.

Accordingly, the requested variance of 2.95 feet from the required 24.45 feet established front building line for the construction of a covered porch is granted.

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance for the carport must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

1. The Board finds that the shape of the petitioners' lot is not peculiar and that the property shares the same topographical conditions as the neighboring lots on the same side of the street.

Accordingly, the requested variance of two (2) feet from the required seven (7) foot side lot line setback for the construction of a carport is denied. Since the petition does not meet the requirements of Section 59-G-1.3(a), the Board finds that it does not need to consider the other requirements for granting a variance.

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction for the covered porch must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(b) and 5(c).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing

Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 5th day of December, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.